

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE



**Marketing Order for
Processing Strawberries, As Amended**

**Effective August 23, 1967
Incorporating Amendments
Through March 29, 2006**

MARKETING ORDER FOR PROCESSING STRAWBERRIES, AS AMENDED

ARTICLE I

DEFINITIONS

Section A. DEFINITION OF TERMS. As used in this Marketing Order, the following terms shall have the following meanings.

1. "Act" means the California Marketing Act of 1937, Chapter 1 of Part 2, Division 21 of the Food and Agricultural Code or as the same may be hereafter amended.
2. "Department" means the Department of Food and Agriculture of the State of California.
3. "Person" means an individual, partnership, firm, corporation, association, subsidiary, affiliate, or other business unit.
4. "Processing Strawberry Advisory Board of California" "Processing Strawberry Advisory Board", "Advisory Board", and "Board" are synonymous and mean the Processing Strawberry Advisory Board created pursuant to Article II of this Marketing Order.
5. "Strawberries" means any and all varieties of strawberries.
6. "Processor" means any person, subsidiary, or affiliate who is engaged within the State of California in processing strawberry products as herein defined.
7. "Integrated Producer-Processor" means any producer who processes strawberries of his/her own production either as an individual, a business entity, or as a separate business entity operating as parent and subsidiary, or otherwise, which are under the same ownership and control, and who retains title to the processed strawberries, including, but not limited to, all rights to hypothecate the processed strawberries.
8. "Processing" means (a) the receiving, grading, sorting, slicing, or treating of fresh strawberries by heat or freezing, and (b) reprocessing previously processed strawberries into retail packed frozen strawberries as herein defined.
9. "Utilize" means to process (a) fresh strawberries into strawberry products as herein defined, and (b) previously processed strawberries into retail packed frozen strawberries as herein defined.
10. "Strawberry Products" means (a) whole or sliced frozen strawberries packed USDA Grade "A" or "B" or equal produced from fresh strawberries with or without the addition of sugar or other sweetening agents, (b) preserves, juice sort-outs, or strawberries, and (c) retail packed frozen strawberries as herein defined produced from fresh strawberries or previously processed strawberries.
11. "Processing Strawberries" means strawberries produced, in whole or in part, for the purpose of being ultimately processed into a use other than fresh consumption.
12. "Retail Pack Frozen Strawberries" means and includes all strawberries processed from fresh strawberries or previously processed strawberries as sliced or whole frozen strawberries and packed into a container containing two (2) pounds net weight or less.

13. "Marketing Season" and "Fiscal Period" are synonymous and mean the period beginning January 1 through December 31 of each year; however, the "price posting and filing marketing season" referred to in Section 63121 means the period beginning on a date set by the Department in a Seasonal Marketing Regulation but no earlier than April 1, and extending through December 31 of each year.

14. "Purchase Price" means all price and price terms for processing strawberries, including any and all forms of compensation from processors to producers.

15. "Price Terms" means and includes all terms and conditions of purchases including but not limited to prices, discounts, allowances, rebates, handling charges, tare allowances, delivery charges, interest rates below the national prime, debt forgiveness, and like factors affecting acquisition costs.

16. "Fixed Purchase Price" means a purchase price which shall remain unchanged for the duration of the price posting and filing marketing season.

17. "Chapter 6" shall mean Chapter 6 (commencing with Section 63101) to Part 3 of Division 21 of the Food and Agricultural Code.

18. "Agreements" means and includes all contracts between a processor and producer for the acquisition of strawberries for processing or financing.

ARTICLE II

PROCESSING STRAWBERRY ADVISORY BOARD OF CALIFORNIA

Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE.

1. An Advisory Board to be known as the Processing Strawberry Board of California is hereby established and shall consist of eight (8) members to assist the Department in the administration of said Marketing Order. The Board shall be composed of eight (8) processors who utilize strawberries for strawberry products, all of whom shall be appointed by the Department. (Amended 3/29/06)

2. There shall be an alternate member for each member of the Board.

3. Members and alternate members shall be appointed by the Department from nominations received for that purpose.

4. The term of office of the members and alternate members of the Board shall be one (1) year beginning on the first day of January and continuing at the pleasure of the Department until December 31 of the same year or until their successors have been appointed and have qualified.

5. Notwithstanding other provisions of Article II, and upon recommendation of the Board, the Department may appoint one (1) member and one (1) alternate member to the Board to represent the general public, in addition to the processor members of the Board provided for in this Section A. Such persons shall not be affiliated in any way with respect to the production or marketing of processed strawberries and shall have all of the rights and privileges, including voting, of any other member appointed pursuant to Article II. The term of office shall be as close as possible to one (1) full year and shall terminate on December 31. (Amended 3/12/01)

Section B. NOMINATIONS FOR BOARD MEMBERSHIP. The Department shall cause to be held, prior to December 31 of each year, a meeting or meetings of persons affected by this Marketing Order for the purpose of obtaining nominations of persons eligible to serve as members and alternate members of the Board.

Section C. APPOINTMENT OF MEMBERS TO THE BOARD.

1. From the nominations received, the Department shall appoint the members and their respective alternates from among processors who utilize strawberries for strawberry products. (Amended 3/29/06)

2. Any member of the Processing Strawberry Advisory Board of California or any alternate member thereof serves at the pleasure of the Department and may be removed by the Department at any time.

Section D. FAILURE TO NOMINATE. In the event nominations are not made pursuant to Section B of this Article within the time specified herein, the Department may select and appoint members and alternates without regard to nomination; provided, that the persons so selected and appointed by the Department shall represent the processor classification designated in Section C hereof.

Section E. QUALIFICATION AFTER APPOINTMENT. Any person selected by the Department as a member or alternate member of the Board shall qualify by filing a written acceptance, Oath of Allegiance, and such other forms as the Department may require within the filing period established by the Department.

Section F. ALTERNATE MEMBERS. An alternate member of the Board shall, in the absence of the member for whom he/she is alternate, sit in the place and stead of such member at any meeting of the Board and shall have all the powers, duties, and privileges of the member while attending any such meetings. In the event of the death, removal, resignation, or disqualification of a member, his/her alternate shall act in his/her place and stead until a successor to such member is selected and has qualified.

Section G. VACANCIES The Department shall fill any vacancy occasioned by the removal, death, resignation or disqualification of any member or alternate member of the Processing Strawberry Advisory Board of California. In making such selection, the Department may take into consideration any nominations made by the remaining members of the Board.

Section H. ORGANIZATION.

1. The Processing Strawberry Advisory Board of California shall not perform any of its duties nor exercise any of the powers herein granted when more than two (2) vacancies in its membership exist.

2. A majority of the members of the Advisory Board shall constitute a quorum. Any recommendation of the Board to the Department shall require an affirmative vote of a majority of the members present or alternates present and acting in the place and stead of members. (Amended 3/12/01)

Section I. COMMITTEES.

1. A committee is hereby established to assist the Advisory Board and the Department in amending or modifying grade standards described in Article III hereof. The committee shall be known as the Committee on Grade Standards and shall be composed of five (5) members, each of whom shall be a producer of strawberries utilized for processing into strawberry products. There shall be an alternate for each member. (Amended 3/29/06)

2. The Department shall appoint the members and alternates of the Grade Standards Committee from recommendations made by the Advisory Board or from the industry generally. The terms of office of the members of said Committee shall be for the same period as for the Advisory Board membership.

3. The duties of the Grade Standards Committee shall be prescribed by the Board, subject to the approval of the Department.

4. The Advisory Board may recommend, and the Department may appoint, such other committees as may be deemed necessary to assist the Board and the Department in performing duties authorized pursuant to this Marketing Order.

Section J. EXPENSES. The members of the Board and of any committee provided for hereinabove and including alternates when acting for members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers hereunder.

Section K. DUTIES AND POWERS OF THE BOARD. The Board shall have the following duties and powers, which may be exercised subject to the approval of the Department:

1. To administer the provisions of this Marketing Order.
2. To recommend to the Department administrative rules and regulations relating to this Marketing Order.
3. To receive and report to the Department complaints of violations of this Marketing Order.
4. To recommend to the Department amendments to this Marketing Order.
5. To assist the Department in the assessment of members of the industry and in the collection of such assessments to cover expenses incurred by the Board and the Department in the administration of this Marketing Order.
6. To assist the Department in the collection of such necessary information and data as the Department or the Board may deem necessary to the proper administration of this Marketing Order and of the Act.
7. To keep minutes, books and records which will clearly reflect all of its meetings, acts and transactions and to provide the Department with copies of the minutes duly certified by an authorized officer of the Board. Said minutes, books and records shall at all times be subject to examination by the Department or its duly authorized representatives.
8. To employ such personnel as may be deemed necessary and fix their compensation and terms of employment.

Section L. LIMITATION OF LIABILITY OF MEMBERS OF THE ADVISORY BOARD. The members of the Advisory Board, or any committees hereunder duly appointed by the Department, and the employees of such Board, shall not be held responsible individually in any way whatsoever to any processor, or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act of omission of any other member of the Board, committee, or employee. The liability of the Board, its committees, or employees shall be several and not joint and no member shall be liable for the default of any other member.

ARTICLE III

GRADE STANDARDS FOR STRAWBERRIES UTILIZED FOR PROCESSING INTO STRAWBERRY PRODUCTS

Section A. GRADE STANDARDS. The Board may recommend that no processor utilize fresh strawberries for processing into strawberry products unless such fresh strawberries meet the grade prescribed herein for such products or as such standards may be amended or modified from time to time. To assure compliance with grade standards, the Board may recommend such terms and conditions as may be necessary.

Section B. WORMS. The authorized inspection agency shall notify the processor if any lot is found to contain worms. The processor may as a result reject any lot containing worms.

Section C. GRADE NO. 1. Fresh strawberries consist of berries which have been harvested in a recognized safe manner, and are of similar varietal characteristics which are firm and meet the color and other requirements specified below, and are free from defects as defined, within the specified tolerances. (amended 2/28/2000)

Color: Berries must have not less than eighty percent (80%) red color characteristic of the variety.

Berries having more than twenty percent (20%) green color are considered immature and are classified as culls.

Berries have dull or a lifeless appearance or which are grayish or brownish in color are considered overripe.

Defects: Defective strawberries mean those berries which are damaged by various causes and are unacceptable for processing.

A. The following are considered damage:

1. Dryness when damaged by seeds which are prominent or excessive and the berry is materially dehydrated, tough, or leathery.
2. Discernible insect or worm injury or worm holes, bird pecks, or slug damage.
3. Sunburn.
4. Water-soaked or waterlogged berries.
5. Catfaces or undeveloped berries, berries with cluster of seeds or a seedy seam or having a hardened seedy or fibrous area in the flesh.
6. Stems and caps, all stems, bracts, or sepals must be entirely removed. Berries shall be considered defective if they have whole or partial caps, stems, or sepals present.
7. Soft. A soft berry is one that will not hold its form, consistency, or shape, or a berry that has lost its firm texture, or will "rag" in the washing.
8. Dirt means that the berry shows dirt which will not wash of in the ordinary process of washing.

9. Mashed or crushed berries.
- B. Free from decay, mold, or fungus growth or any type of rot.
- C. Berries under five-eighths inch (5/8") in diameter when measured at right angles to a straight line running from the stem to the apex.

Defects, including defects of color, damage, decay, or undersized berries, described above, may not average more than five percent (5%) by weight, of the strawberries in any lot.

Section D. GRADE NO. 2. Fresh strawberries, with stems not intentionally removed, which are defective but (1) which are not water-soaked or waterlogged, moldy, rotten, affected by fungus growth or any type of rot; and (2) which do not have more than 50 percent green color.

GRADE NO. 3 Fresh strawberries which meet the Grade No. 1 defect requirements except for green color.

Section E. AMENDMENT OR MODIFICATION OF GRADE STANDARDS.

1. The Board may, upon the advice of the Grade Standards Committee, recommend to the Department the amendment or modification of the aforesaid grade standards.

2. Whenever the board makes recommendations to the Department for the amendment or modification of grade standards described in Section B or Section C above, it shall furnish the Department with facts upon which such recommendations are based.

Section F. EMERGENCY WAIVER OF GRADE STANDARDS.

1. Upon the request of a processor citing extraordinary circumstances which place strawberry growers or processors in jeopardy or severe economic loss, the Department may waive a provision, or provisions, of a grade standard for processing strawberries established pursuant to this Marketing Order for a period lasting no longer than seven (7) days. Any processor may receive and utilize not more than one hundred thousand pounds (100,000 lbs.) of strawberries under such waiver. (Amended 5/1/93)

2. Upon taking action to waive a provision, or provisions, of a grade standard for processing strawberries, the Department shall immediately send, by facsimile, a notice of the action taken to the Board office. The Board shall notify each processor of record, by facsimile, of the action taken as soon as notice is received from the Department. The Department shall also call an emergency meeting of the Committee on Grade Standards and the Advisory Board to be held within four (4) days of the waiver to consider an amendment to the seasonal regulation establishing a grade standard affected. (Amended 5/1/93)

3. Upon the recommendation of the Committee on Grade Standards, the Board at the emergency meeting, may recommend to the Department an amendment to the seasonal regulation establishing the grade standard affected. If approved by the Department, the amendment would remain in effect until the end of the marketing season. (Amended 5/1/93)

Section G. ESTABLISHMENT OF GRADE STANDARDS.

1. If the Department, upon receipt of recommendations for the issuance of the grade standards specified herein or as they may be amended or modified, finds that such recommendations are appropriate and will tend to effectuate the declared purposes of the Act, the Department shall issue such recommendations. The Department shall require processors to limit the utilization of fresh strawberries for processing into strawberry products, as such strawberry products are defined in Article I, Subsection 9 hereof, to fresh strawberries which meet the grade standards herein established or as such standards may, from time to time, be amended or modified; provided, that processors may utilize only such portions of lots of fresh strawberries which meet the grade standards established pursuant to this Marketing Order, the Department may establish such rules and regulations as may be necessary.

2. The Department shall notify the Board of the imposition of any grade standards or any amendment or modification of such grade standards. The Board shall give reasonable notice thereof to all processors on record.

Section H. INSPECTION AND CERTIFICATION. During any period or periods during which grade standards are in effect, all fresh strawberries shall, prior to utilization by any processor for processing into strawberry products, be inspected and certified by an authorized inspection agency in accordance with inspection rules and regulations as the Board may recommend and the Department may issue. The costs of such inspection shall be borne by the processor who receives strawberries and wishes to utilize them. (Amended 5/1/93)

Section I. COMPLIANCE. During the effective period of any grade standards applicable to fresh strawberries for processing, no processor shall utilize any fresh strawberries which have not been inspected and certified, nor shall processor utilize fresh strawberries in excess of that quantity in any lot which meets the prescribed grade standards. (Amended 5/1/93)

ARTICLE IV

GRADES OR STANDARDS, INSPECTION AND CERTIFICATION
OF PROCESSED STRAWBERRIES

Section A. RECOMMENDATION OF GRADES OR STANDARDS. In carrying out the provisions of this Marketing Order and to facilitate the enforcement and administration thereof, the Board may recommend establishing grading terms, grades, or standards for processed strawberries and retail packed frozen strawberries produced from previously processed strawberries. Such grades or standards may be recommended for any or all varieties of strawberries and for strawberries utilized in any or all of various outlets or channels of trade. Such grades or standards may utilize existing State or Federal standards, but in no event shall regulations which are established pursuant to this Article be less restrictive than applicable requirements for processed strawberries under Federal or State statutes.

Section B. ECONOMIC FACTORS. In making any recommendations for standards or grades of processed strawberries and retail packed frozen strawberries produced from previously processed strawberries, the Board shall make an investigation of the economic factors enumerated in Section 58812 as may be applicable and shall submit its findings to the Department.

Section C. AMENDMENT, MODIFICATION, OR TERMINATION. The Board may, from time to time, recommend to the Department the amendment, modification, or termination of any such grades or standards as may have been established.

Section D. ESTABLISHMENT OF GRADES OR STANDARDS

1. If the Department, upon receipt of the recommendations for the issuance of grades or standards for processed strawberries and retail packed frozen strawberries produced from previously processed strawberries or for the amendment, modification, or termination of such grades or standards, finds that such recommendations are appropriate and will tend to effectuate the declared purposes of the Act, it shall issue such regulations as an order and, to assure compliance with such order, the Board shall recommend and the Department shall approve such rules and regulations as may be necessary.

2. The Department shall notify the Board of the establishment of any grades or standards applicable to processed strawberries and retail packed frozen strawberries produced from previously processed strawberries or any amendment, modification, or termination thereof, and the Board shall give reasonable notice thereof to all processors of record.

Section E. INSPECTION AND CERTIFICATION. During any period or periods during which grades or standards are in effect for processed strawberries and retail packed frozen strawberries produced from previously processed strawberries, all processed strawberries and retail packed frozen strawberries produced from previously processed strawberries affected by such regulation shall be inspected and certified by an authorized inspection agency in accordance with inspection rules and regulations which the Board may recommend and the Department may issue. The cost of such inspection shall be borne by the processor who processes such strawberries.

Section F. COMPLIANCE. Each processor shall comply with all applicable regulations issued pursuant to this Article. No fresh strawberries nor previously processed strawberries shall be processed, reprocessed, or otherwise handled by any processor in violation of the provisions of the Article or any orders or regulations issued by the Department pursuant to the provisions of this Article. Violators of any regulations or orders issued pursuant to the provisions of this Article shall be subject to the penalties provided for in the Act.

ARTICLE V

UNFAIR TRADE PRACTICES:
PRICE POSTING AND FILING

Section A. UNFAIR TRADE PRACTICES. It is the declared policy of the State to eliminate fraud, misrepresentation, deception, and other unfair trade practices that have existed in the processing industry and are detrimental to producers, processors, and to consumers of processing strawberries due to the unavailability of accurate and reliable market price information; that in order to prevent fraud, misinformation, deception, and other unfair trade practices, it is declared as the policy of the state that the purchase of processing strawberries be subject to Chapter 6; and that the necessity for the enactment of the Chapter, including the exemptions contained within it, is declared to be for the purpose of protecting the health, peace, safety, and the general welfare of the people of this State.

Section B. PRICE POSTING AND FILING. Each time during a price posting and filing marketing season that a processor establishes or changes purchase prices for processing strawberries, the processor shall, on or before the effective date of the purchase prices, post a schedule of the purchase prices and copies of all non-exempt agreements at each receiving station for which each schedule or agreement with the Advisory Board. The Advisory Board shall, within five (5) days of the effective date of each purchase price schedule or within ten (10) days of the receipt of each non-exempt agreement, mail or deliver a copy of the schedule and the price and price terms of each non-exempt agreement to every other processor. In the case of financing agreements, only the portion of the financing agreement which refers to the acquisition of strawberries and/or the price or price terms paid for the strawberries shall be posted and delivered to other

processors. Except as otherwise provided in Chapter 6 and Article V of this Marketing Order, a processor shall acquire processing strawberries at the filed purchase price.

Section C. SEASONAL MARKETING REGULATION. The Department shall adopt a seasonal marketing regulation pursuant to Section 59171 of the Act, as amended, for price filing and posting. The regulation shall not become effective prior to April 1 of any year.

Section D. ADMINISTRATIVE RULES AND REGULATIONS. The Department, with the assistance of the Advisory Board, shall establish Administrative Rules and Regulations that provide for, but are not limited to, the specific manner of filing, posting, and revising purchase prices and any additional action necessary to assure adequate public disclosure of purchase prices.

Section E. EXEMPTIONS FROM PRICE POSTING AND FILING. The following are exempt from the price posting and filing requirements of this Marketing Order:

1. The acquisition of strawberries for processing by a processor from another processor.

2. An integrated producer-processor. This exemption does not apply to the acquisition of strawberries for processing from any person who is not involved in a proprietary manner in the integrated producer-processor operation and who is not compensated for strawberries delivered through a proportionate share of the profits of the business entity.

3. A processor registered in the state as a bona fide non-profit cooperative when it acquires strawberries from members of the cooperative. This exemption does not apply to the acquisition of strawberries for processing from any person who is not a member of the cooperative.

4. A contract with a fixed purchase price for the purchase of processing strawberries by a processor from a producer which is entered into and filed prior to the effective date of any seasonal marketing regulation for price filing and posting adopted pursuant to Chapter 6.

5. Any contract for the purchase of strawberries for processing by a processor from a producer entered into prior to January 1, 1985, and filed prior to the effective date of any seasonal marketing regulation for price filing and posting adopted pursuant to Chapter 6.

Information obtained by the Advisory Board pursuant to Chapter 6 shall be maintained in confidence; however, the Advisory Board may disclose, upon request, whether a particular producer's processing strawberries are covered by an exempt contract or other arrangement.

Section F. ANNUAL REVIEW & REPORT. The Department shall actively supervise the requirements of Chapter 6 and shall conduct an annual review of its provisions. The review may include an analysis of written reports from processors which the Department may require, an investigation of industry conditions, an audit or processor records required to be maintained pursuant to Chapter 6 and any actions relating to Chapter 6 that are deemed necessary by the Department. The Department shall, on or before the last day of each year in which this Marketing Order is in effect, prepare and file with the Legislature a written report of the operations of Chapter 6 and shall make recommendations regarding its various provisions. Each report and recommendation shall be based on determinations made by the Department as a result of the annual review specified in Article V.

Section G. SUSPENSION OF PRICE POSTING AND FILING. The Department shall suspend the requirements of price posting and filing contained in Chapter 6 if it determines as a result of the annual review and states in the annual report specified in Section F, that price filing and posting is not required to prevent unfair trade practices. The suspension shall apply to the year following the determination unless legislation requiring the adoption of a seasonal marketing regulation for price posting is enacted prior to April 1 of that year.

ARTICLE VI

RECOMMENDATIONS OF BUDGETS AND RATES OF ASSESSMENT BY THE BOARD

Section A. BUDGETS AND RATES OF ASSESSMENT. At the beginning of each marketing season hereunder and as often as may be necessary thereafter, the Advisory Board shall recommend to the Department an estimated budget or budgets to cover expenses necessary for the administration and enforcement of this Marketing Order and for advertising and promotion and any other authorizations contained herein. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray proposed expenditures. The rate of assessment shall not exceed two cents (\$0.02) per crate of fourteen (14) pounds of strawberries, or the equivalent thereof, for all fresh strawberries and previously processed strawberries received by a processor and utilized for processing into strawberry products; provided, however that no processor shall be required to pay the assessment upon strawberries for processing in strawberry products once such assessment has been paid. (Amended 1-1-92)

Section B. APPROVAL OF BUDGETS AND FILING OF RATES OF ASSESSMENT BY THE DEPARTMENT. If the Department finds that the recommended budgets and rates of assessment are proper and equitable and calculated to provide such funds as may be necessary to properly carry out the provisions of this Marketing Order, it may approve such budgets and rates, provided, however, that in no event shall such rates of assessment exceed the maximum rates, authorized in Section 58924 of the Act.

Section C. COLLECTION OF ASSESSMENTS. Each processor subject to this Order shall pay the assessment at the rate approved by the Department pursuant to the provisions of this Marketing Order. Any assessment levied hereunder shall constitute a personal debt of every person so assessed and shall be due and payable to the Department upon demand. In the event of failure by any person or persons to pay any assessment payable hereunder, the Department may file a complaint against such person or persons in a State Court of competent jurisdiction for the collection thereof pursuant to the provisions of Section 58929 of the Act. A late payment fee of ten percent (10%) will be added by the Department to any assessments which become overdue 15 days after the close of the reporting period and, in accordance with Section 58930 of the Act, a penalty of 5 percent (5%) of the unpaid balance will be assessed for each 30 days the assessments due are unpaid commencing 30 days after notice has been given to such handler of his/her failure to pay the assessments on the date required.

Section D. REFUNDS. Any monies collected as assessments during a marketing season and not expended in connection with this Marketing Order may, at the discretion of the Department, be refunded after the close of any marketing season upon a prorata basis to all persons from whom assessments were collected; or a portion of such monies as may be recommended by the Board and approved by the Department may be carried over into the next succeeding marketing season if the Department finds that such monies may be required in defraying the costs of this Marketing Order in such succeeding season. If the Department finds that amounts so returnable are so small as to make impractical the computation and remittance of such prorata refund, the Department may use such funds to defray expenses incurred by it in the formulation, issuance, administration, or enforcement of any subsequent marketing order for strawberries. Thereafter, if there are monies remaining which have not been used by the Department as hereinbefore provided, such monies shall be withdrawn from the approved depository and paid into the State treasury as unclaimed trust monies.

Section E. BONDS. The Department may require that any and all persons handling substantial funds collected pursuant to the provisions of this Marketing Order shall execute and deliver to the Department a bond or bonds in such amount as the Department may designate with surety thereon satisfactory to the Department conditioned upon the faithful performance of the duties of such person pursuant to the provisions of the Marketing Order.

ARTICLE VII

RESEARCH

Section A. RESEARCH. The Processing Strawberry Advisory Board of California, subject to the approval of the Department, is authorized to carry on or cause to be carried on research in the processing or marketing of processed strawberry products.

ARTICLE VIII

ADVERTISING AND PROMOTION

Section A. ADVERTISING AND PROMOTION AUTHORIZATION. The Processing Strawberry Board of California is hereby authorized to prepare plans, administer programs and expend monies, subject to the approval of the Department, for promoting the sale of strawberries, as defined in this Order, for the purpose of maintaining existing markets or creating new and larger markets for strawberries; provided; that any such plans so developed and conducted shall be directed toward promoting the sale of strawberries without reference to a particular private brand name or trade name; and provided further, that such plans or programs make no false or unwarranted claims on behalf of strawberries, nor disparage the quality, value, sale, or use of any other agricultural commodity.

ARTICLE IX

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS. Any and all processors subject to the provisions of this Marketing Order shall maintain books and records reflecting their operation under this Marketing Order and shall furnish to the Department or its duly authorized or designated representative, such information as may be, from time to time, requested by them relating to operations under this Marketing Order and shall permit the inspection by said Department, or its duly authorized or designated representatives, of such portion of such books and records as relate to the operation under said Marketing Order.

Section B. REPORTS TO THE DEPARTMENT. Annually within ninety (90) days after the close of each marketing season hereunder the Board shall prepare and submit to the Department a report showing its operations for the preceding marketing season hereunder.

Section C. CONFIDENTIAL INFORMATION. Any information obtained by any person pursuant to the provisions of this Article shall be confidential and shall not be by him/her disclosed to any other person save to a person with like right to obtain the same or any attorney employed by the Department or the Advisory Board to give legal advice thereupon or by court order.

Section D. IMMUNITY. No person shall be excused from attending and testifying or from producing documentary evidence before the Department in obedience to the subpoena of the Department on the ground or for the reason that the testimony or the evidence documentary or otherwise required of him/her may tend to incriminate him/her or subject him/her to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or for or on account of any transaction matter or thing concerning which he/she may be so required to testify or produce evidence, documentary or otherwise, before the Department in obedience to a subpoena issued by the Department.

ARTICLE X

APPEALS

Section A. APPEALS. Any processor may petition the Department to review any order or decision of the Advisory Board or any of its subcommittees. Any such petition must be filed in writing setting forth the facts upon which it is based.

Section B. EFFECT OF APPEAL. Pending the disposition of any appeal set forth in Section A of this Article, the parties shall abide by the Order or decision of said Advisory Board, unless the Department shall rule otherwise. The Department shall, if the facts stated below show reasonable grounds, grant any such petition and may review or revise in any manner whatsoever any order or decision upon which as appeal is taken.

ARTICLE XI

AGENTS

Section A. AGENTS. The Department may, by designation in writing, name any person or persons including officers or employees of the California Department of Food and Agriculture, to act as its agent or agents, with respect to any provision of these Marketing Orders.

ARTICLE XII

RELATION TO OTHER LEGISLATION

Section A. ANTITRUST LAWS. In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act, (Sections 16700) et seq. of the Business and Professions Code), or any rule of statutory or common laws against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this Marketing Order and in furtherance of the purposes and provisions of the Act, shall be a complete defense to such action or proceeding.

ARTICLE XIII

SEPARABILITY

Section A. SEPARABILITY. If any section, sentence, clause, or part of the Marketing Order is for any reason held to be invalid or unconstitutional, or the applicability thereof to any person, circumstance, or thing is held to be invalid or unconstitutional, such decision shall not affect the remaining portions of this Marketing Order. The Department and the signatories to the assents this Marketing Order hereby declare that the Department would have issued this Marketing Order and each sentence, clause, or part thereof, and each of the signatories to the assents would have assented to each sentence, section, clause, part thereof, despite the fact that one or more sections, sentences, clauses, or parts thereof be declared invalid or unconstitutional.

ARTICLE XIV

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME. This Marketing Order shall become effective on the date specified by the Department and shall continue in effect until suspended or terminated by the Department, or by operation of law in accordance with the provisions of the Act; provided, that beginning in 1972 and every five (5) years thereafter, the Department shall conduct a referendum of the processors to determine whether or not the Marketing Order should be terminated.¹

Section B. TERMINATION. Pursuant to the provisions of Section 59081 of the Food and Agricultural Code, the Department shall suspend or terminate this Marketing Order, or any provision thereof, whenever it finds, after a public hearing duly noticed and held in accordance with the provisions of Article 6 of Chapter I, Division 21 of said Food and Agricultural Code, that this Marketing Order, or any provisions thereof, is contrary to or does not tend to effectuate the declared purposes or provisions of the Act being Chapter I, Division 21 of said Code, within the standards and subject to the limitations and restrictions therein imposed; provided, that such suspension or termination shall not become effective until expiration of the marketing season then current. If the Department finds that the termination of the Marketing Order is requested in writing by processors who process more than forty percent (40%) of the volume of strawberries utilized for strawberry products directly affected by the provisions of this Marketing Order, the Department shall, after a public hearing that such Marketing Order is contrary to or does not tend to carry out the declared policy or the Act, terminate this Marketing Order; provided, that such termination shall not become effective until the expiration of the marketing season then current.

Section C. EFFECT OF TERMINATION, SUSPENSION OR AMENDMENT. Unless otherwise expressly provided for in the notice of amendment, suspension or termination, no amendment, suspension, or termination of the Marketing Order issued by the Department shall either (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any other provisions of said Marketing Order, not so amended, suspended, or terminated; (b) release, condone, or dismiss any violation of said Marketing Order occurring prior to the effective time of such amendment, suspension, or termination; (c) affect or impair any right or remedy of the Department or of any person with respect to any such violation; or (d) affect any liabilities pursuant to the provisions of this Marketing Order.

¹ This marketing order does not specify the voting requirements in order to continue for up to another five year period. However, records indicate that the referendum criteria has been a simple majority vote of those submitting eligible and valid ballots.